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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

DAVID DuBOIS ELDER, as Cotrustee, etc., et al., Plaintiffs and Appellants, v. JOHN THOMAS, Defendant and Respondent.	B194946 (Los Angeles County Super. Ct. No. BP074332)

APPEAL from a judgment of the Superior Court of Los Angeles County. Aviva K. Bobb, Judge. Affirmed.

Freeman, Freeman & Smiley, Stephen M. Lowe and Jared A. Barry for Plaintiffs and Appellants.

Poindexter & Doutré, Inc., James P. Drummy and Jeffrey A. Kent for Defendant and Respondent.

* * * * * *

Plaintiffs and appellants David DuBois Elder and Michael Olenick, as trustees of the Betty Gross Thomas Trust, appeal from the trial court's grant of summary judgment in favor of defendant and respondent John Thomas, also known as Piri Thomas, on appellants' petition for instructions filed pursuant to Probate Code section 17200.[1] The trial court ruled that the undisputed evidence established that the relief sought in the petition was barred both by principles of res judicata and by a prior settlement agreement and release. We affirm. The equitable adjustment sought by appellants arose from and was directly related to the claim litigated and settled in a prior action.

FACTUAL AND PROCEDURAL BACKGROUND

***Facts Preceding the Estate of Thomas Decision*.[2]**

"John Thomas (Thomas) is the sole income beneficiary of a testamentary trust (trust) created in January 1986 by his wife, Betty Gross Thomas, shortly before her death. During his lifetime, Thomas is to receive 'all trust income.' Appellants, who are Betty Thomas's sons by prior marriages, are the trustees of the trust and hold a remainder interest in it. Upon Thomas's death, they will each receive a one-third interest in the trust and will hold as trustees their sister's one-third interest. Upon their sister's death, they will receive her interest as well.

"The trust's sole asset is 32 shares of the Chelsea 23rd Street Corporation (Chelsea), representing approximately 16 percent of Chelsea's total ownership. Chelsea's primary asset is property in New York improved by a hotel which Chelsea owns and operates.

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1 Unless otherwise indicated, all further statutory references are to the Probate Code.

2 The facts are taken verbatim from our prior decision in *Estate of Thomas* (2004) 124 Cal.App.4th 711 (*Estate of Thomas*), superseded by statute as recognized in *Hasso v. Hasso* (2007) 148 Cal.App.4th 329, 337; appellants relied on these background facts in opposing summary judgment.

"Chelsea is a subchapter S corporation. As a result, Chelsea's shareholders are responsible for paying tax on their allocable share of Chelsea's reported income, regardless of whether that income is distributed to the shareholders. To enable the trust to hold shares in Chelsea as a subchapter S corporation, a court order in 1987 established the trust as a qualified subchapter S trust. This order required that the trust have only one income beneficiary who would be treated as the owner of the shares for the purpose of paying income tax. As the sole income beneficiary, Thomas has been responsible for paying all income tax on the Chelsea reported income allocable to the trust's shares.

"Between 1987 and 2000, Thomas received approximately $2,295,000 in income from the trust. During the same time period, Chelsea withheld from all shareholders distribution of approximately $10.5 million of reported income. As of December 31, 2000, Thomas's share of the undistributed income amounted to $1,730,857. In addition to the income tax Thomas paid on income he received from the trust, he paid approximately $712,444 in income tax on the trust's share of undistributed income—sometimes referred to as 'phantom income.'

"Chelsea's financial statement as of December 31, 2000 reported total gross assets of $14,470,169. In October 2001, Chelsea distributed to its shareholders $7.5 million of the $10.5 million in undistributed income; the trust received $1.2 million as its pro rata share. Thomas had previously paid $494,000 in income tax on the $1.2 million distribution.

"After seeking advice of counsel, appellants allocated the $1.2 million to trust principal, rather than income, on the ground that the total distribution ($7.5 million) constituted more than 20 percent of Chelsea's gross assets and thus amounted to a 'partial liquidation' as defined by section 16350, subdivisions (c)(3) and (d)(1)(B).

"In September 2002, Thomas filed a petition for adjustment between principal and income, or, in the alternative, for appointment of an independent special trustee to make adjustments between principal and income. He contended that the $1.2 million should have been allocated to income, because the amount of the distribution to the trust did not exceed 20 percent of Chelsea's gross assets. He further asserted that, at a minimum, an

amount equal to what he had previously paid in income tax on the distribution—$494,000—should be allocated to income. At about the same time, he also filed two other petitions challenging legal, accounting and trustees' fees.

"A trial on all matters was held in May 2003. The facts were essentially undisputed. The parties stipulated that the $1.2 million distribution was comprised of undistributed income and did not include the proceeds from the sale of any corporate asset. They further stipulated that Thomas had already paid income tax on the $1.2 million distribution. The court heard extensive argument from counsel concerning the application of section 16350 and took judicial notice of the legislative history of the statute submitted by Thomas.

"On June 11, 2003, the trial court issued an order granting the petition to allocate the $1.2 million distribution to income and denying the fee petitions. It later incorporated those rulings into a statement of decision. With respect to the allocation issue, the statement of decision provided in relevant part: 'Probate Code § 16350(b) mandates that, except as otherwise provided, a trustee shall allocate to income money received from an entity. The phrase "money received" refers to monies received by the trustee(s) NOT the cumulative amount of distribution to all distributees whether related or unrelated to the Trust. [¶] Accordingly, the $1.2 million distribution which Respondents, on behalf of the Trust, received from the entity, Chelsea, is "money received by a trustee from an entity" under subdivision (b). The Court rejects Respondents' contention that the $1.2 million distribution should be allocated to principal as a partial liquidation pursuant to Probate Code § 16350(d)(1)(B).' The court further determined that if it had not allocated the entire distribution to income, section 16350, subdivision (d)(2), would have entitled Thomas to a credit against the distribution for the $494,000 he had previously paid in taxes."

The Estate of Thomas Decision and Events Following.

Appellants appealed, and on December 2, 2004, we issued a published decision affirming the trial court's ruling. We determined that "the total amount of money and property received in a distribution" as used in section 16350, subdivision (d)(1)(B)

referred to the amount of money received by the trust, not the total amount of an entity's distribution. We further concluded that neither legislative history nor public policy considerations supported a contrary interpretation.

The California Supreme Court denied review of the decision on February 16, 2005.

During the pendency of the *Estate of Thomas* matter, other disputes arose between the parties. These included Thomas's May 2004 petition seeking to remove the trustees and damages for breach of trust, Thomas's August 2004 petition to review the trustees' 2002 accounting, and appellants' August 2004 first account current and report and Thomas's objections thereto. On or about February 24, 2005, appellants and Thomas participated in a court-ordered mediation of their disputes that resulted in a settlement agreement and mutual release (settlement agreement). In addition to listing the foregoing pleadings filed in 2004, the settlement agreement recited that the final determination that the $1.2 million distribution received in 2001 was allocable to income was one of the matters constituting the "Dispute" and that "[t]he parties wish to settle any and all potential claims they may have against each other regarding the Dispute and such other matters as are set forth herein." With respect to the allocation between income and principal, the parties agreed: "The accountants for the Trust will allocate income and expenses to income and principal pursuant to the Uniform Principal and Income Act consistent with the 2002 and 2003 Accountings, provided however, that the amount of expense allocated to income then will be reduced by One Hundred Seventy Seven Thousand Five Hundred ($177,500) and the amount of expense allocated to principal then will be increased by One Hundred Seventy Seven Thousand Five Hundred ($177,500)." The settlement agreement also released the parties from all claims, known or unknown, that arose out of or related "to the subject matter of the Disputes." On March 17, 2005, the trial court entered an order approving the settlement agreement.

In April 2005, the State Senate introduced amendments to Senate Bill No. 296 (Sen. Bill No. 296) that addressed section 16350 and modified that provision "to specify that money is received in partial liquidation if the total amount of money and property

received by all owners, collectively, in a distribution or series of related distributions is greater than 20% of the entity's gross assets . . . ." (Legis. Counsel's Dig., Sen. Bill No. 296 (2005–2006 Reg. Sess.), as amended Apr. 26, 2005.) According to a Senate Judiciary Report, the modification was designed to correct an ambiguity in the statute and reflect the true intent of the Legislature in enacting section 16350. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 296 (2005–2006 Reg. Sess.) as amended Apr. 26, 2005, p. 2.) The modification also immunized from liability any trustee who received a distribution from an entity and allocated the money to income as directed in the *Estate of Thomas* decision. (*Ibid*.) The amendments to section 16350 became effective on July 18, 2005. (Stats. 2005, ch. 51, § 1, eff. July 18, 2005.)

On December 9, 2005, appellants filed a petition for instructions (petition) seeking an order appointing an independent trustee "to allocate future distributions to the Trust partially to principal and partially to income until an amount equal to the [$1.2 million] Distribution has been allocated to principal for the benefit of the remaindermen." Appellants premised their petition on the change in the law stemming from the *Estate of Thomas* decision, stating: "Petitioners seek additional instructions to allocate the assets of the Trust consistent with the revised Uniform Principal and Income Act. While the Settlement Agreement assumed that the $1.2 Million was to be allocated to income, the revised Uniform Principal and Income Act would compel it to be allocated to principal. Since the Trustees have already paid $1.2 Million to Piri consistent with the Settlement Agreement, they propose that the reallocation consistent with the revised Uniform Principal and Income Act can be accomplished by eliminating the debt owed from principal to income (approximately $600,000) and partially allocating future cash distributions from income to principal." (Fn. omitted.)

Thomas filed objections to the petition, arguing that the relief sought was barred by both principles of res judicata and the settlement agreement. Thereafter, in October 2006 Thomas moved for summary judgment on the grounds alleged in his objections, asserting that appellants were precluded from challenging the allocation of the $1.2 million by reason of the final disposition in *Estate of Thomas* and by the mutual release in

the settlement agreement. Appellants opposed the motion, arguing that neither the *Estate of Thomas* decision nor the settlement agreement barred them from seeking prospective relief in the form of adjusting principal and income in future allocations.

Following a hearing on October 4, 2006, the trial court granted summary judgment. Relying on the finality of the order affirmed in *Estate of Thomas* and the finality of the order approving the settlement agreement, the trial court ruled that summary judgment was warranted on three independent bases: "1. The final appellate decision in *Estate of Thomas* (2004) 124 Cal.App.4th 711 is *res judicata*. [¶] 2. Independently, the relief sought by the Trustees should have been sought as a request for adjustment in the prior proceeding ultimately decided by *Estate of Thomas* (2004) 124 Cal.App.4th 711, so the relief they now seek is precluded by *res judicata*. [¶] 3. Independently, the relief sought by the Trustees is barred by a binding settlement agreement, which itself was approved by this Court's final order of March 7, 2005."

This appeal followed.

DISCUSSION

Summary judgment is properly granted if there is no question of fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) To obtain summary judgment, a moving defendant must show that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 849.) Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of fact exists as to the cause of action or the defense thereto. (*Ibid*.) The plaintiff may not rely on the allegations contained in the pleadings to meet this burden, but rather, must set forth specific facts demonstrating the existence of a triable issue of material fact. (Code Civ. Proc., § 437c; *Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476–477.)

On appeal, we exercise our independent judgment in determining whether the moving party is entitled to judgment as a matter of law. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334, 335.) Inasmuch as the grant or denial of a motion for summary judgment strictly involves questions of law, we must independently reassess the legal significance and effect of the parties' moving and opposing papers. (*Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1513.) We will affirm the judgment if it is correct on any ground, regardless of the reasons the trial court gave. (*Salazar v. Southern Cal. Gas Co.* (1997) 54 Cal.App.4th 1370, 1376; *Western Mutual Ins. Co. v. Yamamoto* (1994) 29 Cal.App.4th 1474, 1481.)

I. The Trial Court Properly Granted Summary Judgment on the Ground that Res Judicata Barred the Petition.

Section 17200 permits a trustee or beneficiary of a trust to petition the court concerning the internal affairs of the trust, including for the purpose of granting powers to the trustee. (§ 17200, subd. (b)(8).) In their petition, appellants sought to effect an equitable adjustment pursuant to section 16336, which provides in pertinent part: "(a) Subject to subdivision (b), a trustee may make an adjustment between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied: [¶] (1) The trustee invests and manages trust assets under the prudent investor rule. [¶] (2) The trust describes the amount that shall or may be distributed to a beneficiary by referring to the trust's income. [¶] (3) The trustee determines, after applying the rules in subdivision (a) of Section 16335, and considering any power the trustee may have under the trust to invade principal or accumulate income, that the trustee is unable to comply with subdivision (b) of Section 16335." Appellants premised their request solely on the statutory amendments to section 16350 stemming from the *Estate of Thomas* decision, alleging: "The Court has broad equitable powers to rectify injustice caused to the Trust's remaindermen by the decision in *Estate of Thomas*. An order of re-allocation would avoid the unfortunate and unfair result that the remaindermen of the Trust, namely Petitioners and their sister, would be the only

beneficiaries in California who would suffer from the misinterpretation of the Uniform Principal and Income Act in *Estate of Thomas*."

The trial court properly concluded that res judicata barred appellants' reallocation request. The prerequisite elements for applying the doctrine of res judicata are: "(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding." (*Brinton v. Bankers Pension Services, Inc*. (1999) 76 Cal.App.4th 550, 556 (*Brinton*).) Succinctly stated, "[r]es judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen Corp. v. Monsanto Co*. (2002) 28 Cal.4th 888, 896.) According to the doctrine of res judicata, where a party prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit. (*Id*. at pp. 896–897.)

The doctrine of res judicata served to bar appellants' petition, as all requisite elements were present. Indeed, appellants do not and cannot dispute that the judgment in *Estate of Thomas* satisfied the latter two elements of a final judgment between the same parties. They challenge only the existence of the first element, contending they presented evidence demonstrating that their claim for an equitable reallocation of future distributions was not identical to the claim for allocation of the $1.2 million litigated in *Estate of Thomas*. Specifically, they contend that their petition involved the question of the trustee's equitable powers under section 16336 not at issue in the prior litigation. But as explained in *Brinton, supra*, 76 Cal.App.4th at page 557: "California employs the primary rights theory to determine if two successive proceedings involve the same cause of action. [Citations.] Under the primary rights theory, '. . . the invasion of one primary right gives rise to a single cause of action. [Citations.]' . . . . The existence of a cause of action 'is based upon the harm suffered, as opposed to the particular theory asserted by the litigant.' [Citations.]" Because the violation of a single primary right gives rise to only a single cause of action—regardless of whether there are multiple legal theories

upon which recovery might be predicated or whether there are multiple forms of relief which could be accorded—"'numerous cases hold that when there is only one primary right an adverse judgment in the first suit is a bar even though the second suit is based on a different theory [citation] or seeks a different remedy [citation].' (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681–682.)" (*Lincoln Property Co., N.C., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 912–913 (*Lincoln Property*); accord, *Mattson v. City of Costa Mesa* (1980) 106 Cal.App.3d 441, 446.)

Appellants' petition sought redress for the violation of the same primary right that was at issue in *Estate of Thomas*. The petition expressly sought reallocation of future distributions from income to principal for the sole purpose of offsetting the previous $1.2 million distribution that the *Estate of Thomas* judgment held was properly allocated to income. The final judgment adverse to appellants in *Estate of Thomas* barred the claim for equitable reallocation alleged in their petition because it was premised on the same failure to allocate the $1.2 million distribution to principal. That appellants predicated their claim on a different legal theory and sought different relief than in the *Estate of Thomas* action did not change the fact that they sought redress for a violation of the same primary right already adjudicated and finally determined in a prior action. (See *Lincoln Property, supra*, 137 Cal.App.4th at pp. 913–915.)

Nor does the fact that appellants did not specifically allege a claim pursuant to section 16336 in *Estate of Thomas* preclude application of the doctrine of res judicata. According to that doctrine, "'the prior final judgment on the merits not only settles issues that were not actually litigated but also every issue that might have been raised and litigated in the first action. [Citations.]'" (*Lincoln Property, supra*, 137 Cal.App.4th at p. 913; accord, *Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154, 160.) Illustrating this principle, the court in *In re Marriage of Mason* (1996) 46 Cal.App.4th 1025 determined that the doctrine of res judicata barred a husband's postjudgment motion to adjudicate an allegedly omitted asset. In that case, the divorcing parties divided their assets via a stipulated judgment. Thereafter, the trial court denied the husband's motion to set aside the judgment on the ground that the wife deceived him concerning the value

of her business; the court of appeal affirmed. (*Id*. at p. 1027.) The husband then filed an order to show cause to divide business goodwill, asserting that it was an omitted asset. The appellate court affirmed the denial of the motion, reasoning: "The prior motion to set aside the property division was based on the theory that wife deceived husband and concealed her ability to reopen the business. Husband lost in the trial court and lost on appeal. The doctrine of res judicata bars husband from resurrecting the fraud claim based on the new theory that business goodwill was an 'omitted' asset. '"A party cannot by negligence or design withhold issues and litigate them in consecutive actions. Hence the rule is that the prior judgment is *res judicata* on matters which were raised or could have been raised, on matters litigated or litigable." [Citation.]' [Citation.]" (*Id*. at p. 1028.)

Here, the issue finally determined in *Estate of Thomas* was whether the trustees should allocate a $1.2 million distribution to principal or income. Nothing precluded the trustees from advocating their proposed allocation on any basis. Appellants' petition seeking to reallocate future distributions in an amount equal to the $1.2 million distribution is nothing more than an attempt to resurrect their prior claim under the guise of a new claim under section 16336. Under these circumstances, the doctrine of res judicata applied. (See *Sutphin v. Speik* (1940) 15 Cal.2d 195, 202 ["If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged"].)

Finally, we reject appellants' assertion that the doctrine of res judicata is inapplicable because of the amendments to section 16350 following the judgment in *Estate of Thomas*. In *Castro v. Higaki* (1994) 31 Cal.App.4th 350, 359, the court explained why a subsequent change in the law does not eliminate the preclusive effect of a prior judgment: "A change in statute or law does not entitle a litigant to escape a prior ruling by filing a new action. [Citation.] 'In every instance where a rule established by case law is changed by a later case the earlier rule may be said to be "mistaken"—in one sense of the word. It also may be said to be "unjust"; otherwise it would not have been changed. Such "mistakes" or "injustices" are not a ground for equity's intervention. So

to hold would be to emasculate, if not wipe out, the doctrine of res judicata because the doctrine is most frequently applied to block relitigation based upon contentions that a law has been changed. Our courts have repeatedly refused to treat the self-evident hardship occasioned by a change in the law as a reason to revive dead actions.' [Citation.]" (Accord, *In re Marriage of Fellers* (1981) 125 Cal.App.3d 254, 257 ["a judgment will not be denied res judicata effect just because the law on which it was based has since been changed"].)

In support of their argument that res judicata should not apply, appellants point to legislative history suggesting that they should be permitted to pursue their petition. Addressing the immunity afforded by the amendments to section 16350, an Assembly Judiciary Committee Report on Sen. Bill No. 296 stated: "Under this bill, the conferring of immunity on a trustee who acted in reliance on *Thomas* during this one-year period would not compel a trustee to reallocate money received and allocated in error. However, any money received that was allocated to income (pursuant to *Thomas*) when it should have been allocated to principal should probably be reallocated to principal if this bill becomes effective. Since this is just an immunity from liability, there is nothing to prevent the remaindermen who would benefit from the reallocation of the money received from income to principal from requesting that the court make such a reallocation, if the trustee does not do so voluntarily." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 296 (2005–2006 Reg. Sess.) as amended Apr. 26, 2005, p. 3.)

While these legislative comments indicate that a trustee retains the equitable power to reallocate certain distributions from income to principal, the statements do not address the circumstances here, where a final judgment has already conclusively determined that a distribution was properly allocated to income.[3] Although we

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[3] We note that other legislative comments indicate that equity would not require a reallocation in this case in any event. A letter from the sponsor of Sen. Bill No. 296, State Senator John Campbell, observed that "most observers who criticize the Thomas decision also believe that the court achieved justice for the income beneficiary in that case."

acknowledge that appellants may be the only parties ever adversely affected by the *Estate of Thomas* decision, disparate treatment has never been a basis to avoid application of the doctrine of res judicata. In *Slater v. Blackwood* (1975) 15 Cal.3d 791, 797, our high court explained why the doctrine of res judicata should be applied even where there has been a change in the law following a judgment: "It cannot be denied that judicial or legislative action which results in the overturning of established legal principles often leads to seemingly arbitrary and unwarranted distinctions in the treatment accorded similarly situated parties. However, '[p]ublic policy and the interest of litigants alike require that there be an end to litigation.' [Citation.] The result urged by plaintiff, to borrow the language of Justice Traynor's dissent in *Greenfield* [*v. Mather* (1948) 32 Cal.2d 23], would call '. . . into question the finality of any judgment and thus is bound to cause infinitely more injustice in the long run than it can conceivably avert in this case.' (*Greenfield v. Mather, supra,* 32 Cal.2d at p. 36.) The consistent application of the traditional principle that final judgments, even erroneous ones [citations], are a bar to further proceedings based on the same cause of action is necessary to the well-ordered functioning of the judicial process. It should not be impaired for the benefit of particular plaintiffs, regardless of the sympathy their plight might arouse in an individual case."

Accordingly, we are guided by the court's conclusion in *Castro v. Higaki, supra,* 31 Cal.App.4th at page 359: "Appellant presented her claim, and it was heard and decided under the law in effect at that time, resulting in a judgment that now carries preclusive effect despite any subsequent amendment to the statute."

II. The Trial Court Properly Granted Summary Judgment on the Independent Ground that the Settlement Agreement and Release Barred the Petition.

As an independent and alternative ground for granting summary judgment, the trial court ruled that the court-approved settlement agreement barred the petition. Since the parties did not offer any extrinsic evidence as to the meaning of the settlement agreement, we construe it independently as a matter of law. (*Citizens for Goleta Valley v.*

HT Santa Barbara (2004) 117 Cal.App.4th 1073, 1076.) We conclude that the trial court's determination was correct.

A settlement agreement extends to those matters that clearly appear to have been comprehended by the parties, along with the "necessary consequences" of those matters. (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 677.) A release is the abandonment or relinquishment of a claim which extinguishes a cause of action against another and which may be pleaded as a defense to a cause of action. (*Pellett v. Sonotone Corp.* (1945) 26 Cal.2d 705, 711–712.) "Thus, a release 'conclusively estops the parties from reviving and relitigating the claim released.' [Citation.]" (*In re Mission Ins. Co*. (1995) 41 Cal.App.4th 828, 838.) Settlement and release agreements are governed by the ordinary rules of contract interpretation. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.)

In determining the intent of the parties here, we are guided by the outward expression of the settlement agreement and not by any party's unexpressed intentions. (*Winet v. Price, supra,* 4 Cal.App.4th at p. 1166.) The language of the settlement agreement reflected a clear intention on the part of appellants and Thomas to effect a global settlement of specified pending claims and issues, including all matters relating to the $1.2 million distribution. The recitals at the beginning of the settlement agreement identified the $1.2 million distribution as one of the matters comprising the parties' "Dispute," providing: "J. In 2001, the Trust received from Chelsea a distribution in the amount of $1,200,000, hereinafter referred to as the '$1.2 million distribution.' After litigation it has been finally determined that the $1.2 million distribution is allocable to income. [¶] K. All of the pleadings described in Recitals D through H and the matters described in Recitals I and J constitute the 'Dispute.' The parties wish to settle any and all potential claims they may have against each other regarding the Dispute and such other matters as are set forth herein." Thereafter, the settlement agreement outlined the several matters on which the parties had reached agreement, including: "1. Allocation between Income and Principal. The accountants for the Trust will allocate income and expenses to income and principal pursuant to the Uniform Principal and Income Act

consistent with the 2002 and 2003 Accountings, provided, however, that the amount of expense allocated to income then will be reduced by One Hundred Seventy Seven Thousand Five Hundred ($177,500) and the amount of expense allocated to principal then will be increased by One Hundred Seventy Seven Thousand Five Hundred ($177,500)."

In a later section of the "Agreement" portion of the settlement agreement, the parties executed mutual releases: "14. Releases. [¶] a. For purpose of this paragraph, 'Claims' means claims, damages, losses, causes of action, and costs or expenses, known or unknown, suspected or unsuspected, that relate to the Disputes. [¶] b. Except for Claims arising under or for enforcement of this Agreement, the Parties, and each of them, release each other, their representatives and attorneys from any and all Claims arising out of or relating to the subject matter of the Disputes." The parties further represented that they had not assigned any claims and expressly waived the rights and benefits of Civil Code section 1542, adding that they fully understood the provisions of that statute and had reviewed the statutory language with counsel.[4] Finally, the releases concluded by stating that "[e]ach party covenants not to sue or otherwise assert or prosecute any Claim released in this paragraph."

It is well established that a general release which explicitly covers unknown claims and specifically waives the provisions of Civil Code section 1542 is "completely enforceable and act[s] as a complete bar to all claims (known or unknown at the time of the release) despite protestations by one of the parties that he [or she] did not intend to release certain types of claims." (*San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1053; see also *In re Mission Ins. Co., supra*, 41 Cal.App.4th at pp. 837–839; *Winet v. Price, supra*, 4 Cal.App.4th at pp. 1166–1170.) We find no merit

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[4] Civil Code section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

to appellants' assertion that they did not release the claims concerning future distributions asserted in their petition because they were not the same as those raised in *Estate of Thomas*. It is not necessary for claims to be identical in order for a release to apply. The settlement agreement expressly applied to all claims "arising out of or relating to" the disputes, which included the $1.2 million distribution. The Supreme Court has stated that "the ordinary meaning of ['relating to'] is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with,' Black's Law Dictionary 1158 (5th ed.1979)." (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 383–384.) Here, both the petition and the original petition in *Estate of Thomas* sought an allocation or reallocation of trust assets that would effectively attribute the $1.2 million distribution to principal rather than income. Because the petition here related to the subject matter of the former action, appellants are barred as a matter of law from maintaining the present action by reason of the settlement agreement.

DISPOSITION

The judgment is affirmed. Respondent is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST